

THE HONORABLE RONALD B. LEIGHTON

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TROY X. KELLEY,

Defendant.

Case No. 3:15-cr-05198-RBL

DEFENDANT'S MOTION IN LIMINE
TO EXCLUDE 404(B) EVIDENCE
REGARDING JASON JERUE

**NOTED FOR:
FRIDAY, MARCH 18, 2016**

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

Defendant Troy Kelley moves to exclude any and all evidence and argument regarding his employment of Jason Jerue following the dissolution of United National and his payment to Mr. Jerue of severance pay. The government has utterly failed to demonstrate the relevance of such evidence, and the only purpose of introducing it is to encourage jurors to engage in groundless and prejudicial speculation. The evidence should be excluded.

II. ARGUMENT

The government has indicated that it intends to offer, under Federal Rule of Evidence 404(b), "[e]vidence that, following the 2008 dissolution of United National LLC, [Mr. Kelley] continued to funnel jobs and funds to Jason Jerue, including employment by Attorney Trustee

1 Services, Inc., employment by the Washington State Auditor's Office, and two payments of
 2 approximately \$10,000 each." Declaration of Angelo J. Calfo ("Calfo Decl."), Ex. 1. Mr.
 3 Kelley has not been charged with any crimes related to his continued employment of or
 4 payment of severance to Mr. Jerue. Rather, the government seeks to use this as 404(b)
 5 evidence to prove Mr. Kelley's intent to commit the crimes with which he is charged.

6 According to the government, Mr. Kelley's continued professional relationship with
 7 Mr. Jerue shows Mr. Kelley's guilty mental state because it was, and this is an actual quote,
 8 "*presumably* in the hope that Jerue would not reveal information concerning events at Post
 9 Closing Department." Calfo Decl., Ex. 1. Presumably. The government has provided exactly
 10 zero support for its presumption. There is literally nothing in any document, any FBI interview
 11 record, or any testimony given by Mr. Jerue to support the government's presumption. In fact,
 12 according to the FBI's interview records, Mr. Jerue described the payments as severance pay
 13 promised by Mr. Kelley. Calfo Decl., Ex. 2, p. 14. Such evidence does not go to Mr. Kelley's
 14 intent to commit a crime.

15 As far as Mr. Jerue's continued employment following the dissolution of PCD, as Mr.
 16 Jerue explained it, at the time PCD shut down, he was counting on continued employment with
 17 PCD because he and his wife were expecting a baby. Ex. 2, pp. 11-12. Mr. Kelley then kept
 18 Mr. Jerue on to continue doing reconveyance work in Oregon with Attorney Trustee Services.
 19 Ex. 2, p. 12-13. Sometime later, with Mr. Jerue continuing to experience financial difficulties
 20 after the birth of his son, Mr. Kelley offered him part-time work with the State Auditor's
 21 Office, doing work that was well within Mr. Jerue's area of experience and that would enable
 22 him to work from home while caring for his son. Ex. 2, p. 14.

23 As Mr. Jerue's statements indicate, the government's 'presumption' that Mr. Kelley did
 24 any of this from a bad motive is simply groundless. Nonetheless, the government apparently
 25 wants jurors to engage in the same unfounded speculation it has, presuming that Mr. Kelley

1 continued association could only have tried to help Mr. Jerue to hide a crime, even though Mr.
2 Jerue himself denies it.

3 **III. CONCLUSION**

4 Under Evidence Rules 401, 402, and 403, Mr. Kelley requests that the Court exclude all
5 evidence and argument regarding Mr. Kelley's employment of Jason Jerue following the
6 dissolution of United National and his payment to Mr. Jerue of severance pay.

7 DATED this 10th day of March, 2016.

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9 **CALFO HARRIGAN LEYH & EAKES LLP**

10 By s/Angelo J. Calfo
11 Angelo J. Calfo, WSBA #27079
12 Patricia A. Eakes, WSBA No. 18888
13 Emily Dodds Powell, WSBA #49351
14 Andrew R.W. Hughes, WSBA #49515
15
16 999 Third Avenue, Suite 4400
17 Seattle, WA 98104
18 Telephone: (206) 623-1700
19 Email: angeloc@calfoharrigan.com
20 peakes@calfoharrigan.com
21 emilyp@calfoharrigan.com
22 andrewh@calfoharrigan.com

23 *Attorneys for Defendant Troy X. Kelley*
24
25

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Andrew C. Friedman andrew.friedman@usdoj.gov

Arlen R. Storm arlen.storm@usdoj.gov

Katheryn Kim Frierson katheryn.k.frierson@usdoj.gov

Richard E. Cohen richard.e.cohen@usdoj.gov

s/Susie Clifford